

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

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KRISTINA RAPUANO, ET AL. *
v. * 18-cv-1070-LM
TRUSTEES OF DARTMOUTH COLLEGE * July 9, 2020
* 10:04 a.m.
* * * * *

TRANSCRIPT OF SPECIAL HEARING
BEFORE THE HONORABLE LANDYA B. MCCAFFERTY

APPEARANCES:

For the Plaintiffs: Deborah K. Marcuse, Esq.
Nicole Wiitala, Esq.
David Sanford, Esq.
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Charles G. Douglas, III, Esq.
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Court Reporter: Susan M. Bateman, RPR, CRR
Official Court Reporter
United States District Court
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Concord, NH 03301
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1 P R O C E E D I N G S

2 THE CLERK: This Court is in session and has
3 for consideration a fairness hearing in civil matter
4 18-cv-1070-LM, Kristina Rapuano, et al., versus Trustees
5 of Dartmouth College.

6 THE COURT: All right. Welcome everyone that
7 I see on the screen.

8 I know there are others that I don't see on
9 the screen. I welcome you as well.

10 I entered a public access order in this case,
11 you may have already seen it, and the reason for that is
12 because this is happening via video and this is not
13 normally how we conduct hearings, as you can imagine,
14 but because of the pandemic we are conducting this
15 hearing via video.

16 And in order to do that I need to weigh First
17 Amendment rights. I need to weigh the right of the
18 public to access this hearing and make sure that this
19 video proceeding is not impinging on that right.

20 I've done the weighing. I've made the factual
21 findings. They're contained in my public access order.
22 I won't belabor them here, but I just wanted to let you
23 know that I have found that this video proceeding
24 adequately accounts for the public's right of access.

25 In some ways, frankly, a Zoom hearing like

1 this gives the public greater access to a hearing like
2 this because those who may not come to this hearing
3 because of travel, distance, fear, embarrassment,
4 because of -- maybe they have symptoms so they wouldn't
5 necessarily be able to come to an in-court hearing.
6 Maybe they have COVID-19. Maybe they're under a
7 quarantine.

8 There are all kinds of people who would not
9 attend a hearing in court who will attend a hearing via
10 video. So in many ways this hearing grants the public
11 greater access during this pandemic to this hearing and
12 this proceeding.

13 I do want to say that my approach to this
14 pandemic and all the hearings that I've held has been to
15 try to make them as accessible for the public as I
16 possibly can. So I give access to anyone who requests
17 the link to this hearing. I believe that the court's
18 business is the public's business, and I have been
19 giving the link out to anyone, any member of the public
20 who requests it. So there could be a large number of
21 people watching. Some you may know as counsel,
22 litigants. You may know that there are people watching,
23 but I want you to know that this Zoom link has been
24 given out to any member of the public who requests it,
25 any member of the media who requests it.

1 So let me just also begin this hearing by
2 reminding members of the public who are watching and
3 anybody who is participating in this hearing, we have a
4 local rule, it's 83.8, and it states, and I'll just read
5 a little bit to you, "All persons are prohibited from
6 photographing, recording (audio or video), broadcasting,
7 transmitting, or televising court proceedings."

8 This is a court proceeding so that rule
9 applies.

10 And should there be any violation of it, which
11 I know there will not be, I'm confident there will not
12 be, that would result in sanctions, including, you know,
13 removal of court-issued media credentials or restricted
14 entry to future hearings.

15 I just want to issue that warning. I don't
16 anticipate that I would need to in any way issue any
17 sanctions for a violation of that local rule. At least
18 that's my hope.

19 As I said, my approach is to grant wide
20 access, and I have not had one violation of this rule
21 and we've been doing hundreds of video hearings here in
22 New Hampshire.

23 So that being said, let me also tell people on
24 this video proceeding, clients who are here, your
25 lawyers, obviously your lead counsel, are on the screen

1 as well. Should at any point you need to speak to your
2 lawyers, all you need to do is let me know. Just say,
3 Judge, may I speak to my lawyer. I will -- the nice
4 thing about this technology is that Ms. Sackos who you
5 just saw, she's in control. She's in charge. She will
6 create a breakout room for you to speak confidentially
7 with your lawyer. That can happen at any moment at any
8 time. We all know that's part of this process because
9 in court all you would have to do is nudge your lawyer
10 and you would have an opportunity to speak to them.
11 This is not an in-court proceeding.

12 So I want to make sure that you understand
13 that at any point if you would like to speak to your
14 counsel we will move you into a breakout room and let
15 you do that, and I want to assure you that that is not
16 something I am worried about. That's just part of the
17 process. And I want to make this as close to an
18 in-court hearing as I can in terms of your comfort
19 level.

20 So if you ask, you will be granted that time.
21 Just understand that.

22 All right. So if you're not speaking -- and
23 that includes me because I won't be speaking much more
24 beyond the introduction. I will mute my microphone just
25 to help keep things relatively quiet for the person who

1 is speaking.

2 Now, let me just warn folks. Right now
3 everything seems to be working. I can see everybody's
4 screen clearly. I can see your faces clearly.
5 Hopefully you can as well.

6 Sometimes because of the bandwidth that's
7 being used for video we can start having sticking and
8 people getting stuck and we can have technological
9 issues. There is a fix for it, and here's the fix. And
10 if it happens, I just want to warn you ahead of time
11 this is how I'll deal with it, and I know Ms. Sackos is
12 listening as well. If we start having problems with
13 people getting stuck and having technical issues, what I
14 think we'll do is we will keep on the screen for
15 bandwidth purposes as few videos as we can. Ms. Sackos
16 will help us with that.

17 So whoever is speaking in the moment should
18 stay on the screen, but then we might have to remove
19 people from the screen just to allow for the bandwidth
20 if we run into that issue. I'm not seeing that right
21 now, and I hope that carries on through this proceeding,
22 but I just want to let you know that might be one
23 technical glitch. That's how I'll deal with it. So you
24 might not see everybody all the time, but you'll see all
25 the faces that you need to see.

1 So we'll keep lead counsel on the screen,
2 we'll keep myself, unfortunately, on the screen, and
3 then we'll keep whoever is the speaker if we run into
4 problems.

5 All right. If there are any technical issues,
6 let me know. Just try to signal us. Sometimes you get
7 stuck. We don't know that you're stuck. But let us
8 know if there's something that you missed or some sort
9 of problem. We'll try to fix it.

10 All right. So those are the sort of
11 procedural issues I wanted to go over with you.

12 Let me just begin I think this important
13 proceeding by summarizing where we are and then getting
14 right into it. I know that the plaintiffs are going to
15 make some statements and the provost is also going to
16 speak, and then counsel will perhaps speak at the end.
17 I'll have a few questions. I've read everything you've
18 submitted.

19 So first, the parties in this case presented a
20 proposed settlement for preliminary approval, and at
21 that stage the Court determines whether it will likely
22 be able to, that's the standard, likely be able to
23 certify the class and approve the settlement under Rule
24 23(e).

25 Now, if yes, the Court then directs service to

1 all class members, and after notice to the class the
2 Court holds a fairness hearing at which class members
3 may appear to support or object to the proposed
4 settlement. Then the Court decides whether to give
5 final approval to the settlement.

6 Now, in my order dated January 29th I
7 explained the more rigorous standard of review that I
8 was using to review the proposed settlement. It makes
9 no sense to have a judge approve preliminarily a
10 settlement and then go to the final fairness hearing and
11 have the judge say, yeah, but I have this problem, I
12 have that problem.

13 So ultimately, as I laid out in my January
14 29th order, I actually carefully scrutinized the
15 proposed settlement at that time and gave it preliminary
16 approval.

17 Today is the fairness hearing, and all class
18 members have received notice of this hearing. I will
19 hear from victims, plaintiffs, and then I believe a
20 statement from the provost at Dartmouth, and then I'll
21 hear I assume from counsel to end this proceeding. And
22 then, as I said, I'll have a few questions based on my
23 reading of some of the documents just to get some
24 clarity.

25 Now, my understanding at the outset is that no

1 member of the class objects to this settlement, and I
2 just want to confirm that at the start that is still the
3 case. There is no objection from any member of the
4 class?

5 MS. MARCUSE: Your Honor, that is correct.

6 This is Deborah Marcuse for the plaintiffs.

7 THE COURT: Okay. All right. Thank you.

8 That having been said and the introduction
9 having been laid out, I know that counsel had spoken and
10 reached an agreement or understanding as to how this
11 proceeding would occur, and I believe there are three
12 members from the class who are going to make statements
13 and you would like to begin that way. So I don't want
14 to stand in the way of that.

15 Is there anything else that counsel needs to
16 bring to my attention before we begin that process?

17 MS. MARCUSE: Not from the plaintiffs, your
18 Honor.

19 MS. LUKEY: And nor from the defendant.

20 Thank you.

21 THE COURT: All right. Thank you.

22 All right. So I believe that Ms. Brietzke, if
23 I'm pronouncing that correctly, is going to be your
24 first speaker and will be reading a statement or making
25 a statement on behalf of all the victims.

1 And so I'll let you, Attorney Marcuse,
2 introduce each of your speakers.

3 MS. MARCUSE: Thank you, your Honor.

4 And as a preliminary matter, thank you so
5 much, and thank you to all of the court personnel, for
6 the great care that you have shown in putting this
7 together in this complicated and difficult time. We so,
8 so appreciate it.

9 The first individual to speak will be
10 plaintiff and class representative Sasha Brietzke
11 reading a statement on behalf of all nine plaintiffs in
12 this case.

13 THE COURT: All right.

14 Ms. Brietzke, please go ahead.

15 MS. BRIETZKE: Your Honor, thank you.

16 My name is Sasha Brietzke. I am currently
17 still a graduate student at Dartmouth College, and I am
18 reading this statement on behalf of all nine named
19 plaintiffs: Kristina Rapuano, Vassiki Chauhan,
20 Annemarie Brown, Andrea Courtney, Marissa Evans, Jane
21 Doe, Jane Doe 2, and Jane Doe 3.

22 We want to begin by thanking the Court and all
23 of those involved for their great effort in this case.
24 We are grateful for this opportunity to gather virtually
25 and be a part of this final fairness hearing.

1 We have come a long way and endured
2 immeasurable pain and risk to get here, but today we are
3 proud of ourselves as plaintiffs and class
4 representatives for banding together to report our
5 harassment in the labs of Bill Kelley, Todd Heatherton,
6 and Paul Whalen in the Psychological and Brain Sciences
7 Department at Dartmouth, and standing up for an entire
8 class of our peers who suffered silently.

9 Pursuing this lawsuit required us to make some
10 of the most personal and sensitive details of our lives
11 public, subject to scrutiny and ridicule by colleagues
12 and strangers. Having already experienced significant
13 emotional, physical, and career harm at the hands of the
14 three predatory professors, we risked further exposure
15 and trauma by reliving those memories as we went forward
16 with this case.

17 Our ability to work suffered and our once
18 passionate love for science dimmed, but still we stand
19 here today united in power and feel hope for our futures
20 and the women that we stand for.

21 We believe that bringing and resolving this
22 case on behalf of the class has brought the most
23 benefits to the largest number of people possible.
24 Though it is not possible to fully restore what each
25 member of our class has lost, we are hopeful that the

1 resolution we have worked hard and long to obtain will
2 help restore wholeness to the women we represent. So we
3 are most proud today of our fellow class members who now
4 can stand with us and have this opportunity to help
5 enact change and seek some redress for what they went
6 through at Dartmouth. We are here for you and in
7 solidarity with all of you today.

8 In academia there is an insidious notion that
9 we can only effectuate change once we have achieved
10 tenure. We were consistently told to "keep our heads
11 down and do our science" instead of cause a fuss about
12 the conditions created by the three professors in which
13 we were forced to work. Conditions in which gendered
14 derogatory comments about appearance and scientific
15 ability were made flippantly. Conditions in which the
16 spectre of sexual violence loomed ominously. Conditions
17 which forced women out of the institution, and more
18 egregiously, out of science itself.

19 In 2017 we decided that the terms of climbing
20 the career ladder were just too much to bear and that
21 while our science, while an easier path professionally,
22 meant complicity in sheltering sexual predators. We all
23 came to school to learn and make exciting discoveries,
24 but we temporarily paused to raise our heads, to issue
25 reports, and to fight for ourselves and others.

1 Ultimately, we chose to bring forward this
2 lawsuit because it was the right thing to do. To stand
3 up for our friends, our co-workers, the unresolved
4 generations who came before us, and generations yet to
5 follow who deserve the honest promise of a Dartmouth
6 education. We came forward because each of us knows a
7 multitude of women who have encountered the same
8 experience at our institution, as well as within the
9 broader circles of science and academia. We hope that
10 by effecting this change within the bounds of our campus
11 we have set the tone for change on a broader scale to
12 follow.

13 All nine of us detailed our stories before the
14 public eye exposing our painful memories and the toll
15 that they took on us.

16 The six of us who chose to publicly include
17 our names did so because we felt that we had to be
18 heard, to stand up for yourselves, and to loudly give a
19 voice to those who felt they could not.

20 In this case being a Jane Doe didn't equate to
21 complete anonymity, but the use of pseudonyms was
22 critical for each Jane Doe. The Jane Doe plaintiffs in
23 our lawsuit were only able to come forward and seek
24 justice through the court system because they were given
25 the opportunity to use a pseudonym. The ability to file

1 a lawsuit as a Jane Doe is a critically important
2 protection that enables individuals to vindicate their
3 rights in court and fight to end the cycle of abuse and
4 silence.

5 At Dartmouth three bad apples were removed,
6 but they risked spoiling the bunch. We hope that the
7 meaningful reforms being enacted as part of the
8 settlement will prevent this from happening again.
9 Collective action, as we've shown here, is capable of
10 strongly moving the needle. The substantial
11 programmatic relief obtained through this settlement
12 will remain in place for the next ten years and will
13 entail over \$1.5 million of support for women in our
14 community moving forward. We cannot continue to live in
15 a society that treats sexual assaults as a mere scandal.
16 We cannot continue to turn a blind eye when we observe
17 violent language and behavior from those in power.
18 There must be zero tolerance in our institutions for
19 sexual harassment and violence. We are proud of our
20 accomplishments, but in many ways we wish we were not
21 here today. We deserved the opportunity to learn in a
22 safe environment. Future women must be treated better
23 by the academy.

24 Speaking up about sexual violence in the
25 workplace is nearly impossible. It was difficult even

1 though we had a sizable group. The power differential
2 between advisor and advisee is astronomical as mentors
3 hold the key to our entire future in the field. Our
4 heart aches for those students who must stand alone in
5 the Title IX office who will be discredited and
6 discouraged from reporting, who will be left to fend for
7 themselves against retaliation. We came together and
8 through the strength of a community were able to be
9 heard and transform our department. Let our narratives
10 prompt the public at large to believe women. Let our
11 records and the public make it easier for future women
12 to be heard. Next time it should not take nine women or
13 ninety women. Listen to the first woman, and together
14 let's make sure it does not happen to another.

15 Thank you so much to the Court for the
16 privilege to speak and for your time.

17 THE COURT: Thank you very much.

18 Attorney Marcuse.

19 MS. MARCUSE: Thank you very much to all of
20 the nine plaintiffs.

21 The next person to speak will be Kristina
22 Rapuano.

23 MS. RAPUANO: Thank you.

24 And thank you, your Honor, for the opportunity
25 to speak and address the Court today.

1 All right. My name is Kristina Rapuano. I
2 was raised in a blue-collar home. I graduated from
3 elementary school in a church where I was taught
4 creationism over natural selection. My father, who
5 attended trade school instead of a traditional high
6 school, insisted on college and so I fumbled my way into
7 a large state school where I had virtually no
8 interaction with professors. I am the first in my
9 family's history to pursue post-graduate education.

10 When I arrived at Dartmouth, everything felt
11 foreign; the language, the social etiquette, the
12 expectations. I struggled to fit in and to find my
13 place in this new world. They say imposter syndrome is
14 normal in graduate school, but I felt to my core that I
15 did not belong in a PhD program, much less at Ivy League
16 institution. I didn't feel this way because of a lack
17 of confidence in my own abilities but because I quite
18 literally did not belong to this group of ivory tower
19 elites.

20 Many people don't understand how power can be
21 abused until they experience it firsthand, up close. I
22 desperately wanted to belong. I wanted a seat at the
23 table, and so I was pulled into a toxic culture that
24 eventually escalated to the point of no return.

25 The power that faculty wield over their

1 graduate students under these conditions is not just
2 harmful but life-threatening. My experiences at
3 Dartmouth cost me my mental health, my physical
4 well-being, and my sense of connection. Years later I
5 am still grappling with these consequences. It's no
6 small feat that I am still standing here before you
7 today, albeit virtually.

8 Although these experiences were horrifying,
9 bringing this lawsuit forward came with its own set of
10 challenges. It would have been far easier for us to
11 remain silent, but silence perpetuates narratives like
12 my own. Our stories were dissected and scrutinized by
13 the media, as well as by our peers, our colleagues, and
14 by complete strangers. To have such personal stories
15 exposed to the world and placed under a lens is not only
16 retraumatizing, it's invasive. The act of recounting
17 difficult memories, having to constantly remind yourself
18 that what happened was not your fault, worrying about
19 how the public will perceive you, praying this won't
20 affect your position in your department and your
21 relationship with your peers, trying not to let the
22 negative comments and messages on social media get to
23 you, this all wears a person down no matter how strong
24 and resilient they are. This exposure can change a
25 person's reputation for years to come. I can say with

1 confidence that I continue to be recognized for my
2 service rather than for my science.

3 My story is not unique. It's a narrative that
4 pervades academia. It's part of a pattern that needs to
5 come to an end. I watched that cycle continue in our
6 own department as I learned of other women being harmed.
7 It was at that point that I chose to come forward with
8 my own story. I wanted to be known for my science, not
9 for the worst moments of my life, but the science cannot
10 exist without the women behind it persisting in spite of
11 these moments.

12 Not a single one of the ninety women
13 represented today should have had to experience the
14 things that they did at Dartmouth, but I'm proud to say
15 that this cycle ends with us. I'm proud of what we've
16 accomplished as a class. I'm proud of each of the women
17 that came forward to reclaim their power and their
18 voices. Believe me when I say I know how much it takes
19 out of you. This work is exhausting. And yes, it
20 absolutely is work. It shouldn't have been our
21 responsibility to do this work, but I hope that academia
22 will be a safer and more equitable place because of the
23 work that each and every one of us put in.

24 We stand here today on the shoulders of so
25 many women that came before us, women that demanded

1 space in the academy and would not take no for an
2 answer, women that demanded that their voices be heard,
3 women that encouraged us to speak our truth, and allies
4 that centered and amplified those voices.

5 There's still so much work to do and so many
6 more walls to tear down. Despite the collective trauma
7 and countless hours, months, years worth of emotional
8 labor, I'm hopeful that our case has and will continue
9 to inspire change throughout academia. We have ignited
10 a flame that will not go out, that cannot be forgotten,
11 and that will continue to grow and gain momentum as we
12 demand the restructuring of a flawed system.

13 Thank you for your time.

14 THE COURT: Thank you very much.

15 Attorney Marcuse.

16 MS. MARCUSE: Thank you, your Honor.

17 And thank you, Kristina.

18 The last of the plaintiffs to speak at this
19 time will be Vassiki Chauhan.

20 MS. CHAUHAN: Your Honor, I'm Vassiki Chauhan,
21 a plaintiff in the lawsuit and a fifth year graduate
22 student at the Department of Psychological and Brain
23 Sciences at Dartmouth.

24 Since the night I was assaulted, I have
25 written many statements both for possessing my own

1 trauma and for communicating the sheer magnitude of
2 impact with others. The common theme has been about the
3 struggles of reintegrating fragments of space, time, and
4 self that are ripped apart by the voices of denial, of
5 choice, and of consent. Today, I'm using this
6 opportunity to relate in my own words and my own voice
7 the narrative of a choice I made with complete
8 self-awareness and sense of agency: The decision to
9 share my truth and demand justice. Between that fateful
10 night and this momentous morning, I have become a
11 different person. I had to in order to survive. I am a
12 single data point amongst numerous survivors of sexual
13 violence, one who has been able to inspire for some
14 semblance of justice in return for the selfless act of
15 repeatedly reliving my own trauma.

16 Growing up in suburban middle class India in
17 an upper caste family, I had the privilege of nurturing
18 the dream of becoming a scientist from an early age. I
19 was sheltered in a safe and supportive home where my
20 parents made space for my curiosity. Today home means
21 something different to me. Today home is a place where
22 one can dissent without the fear of retaliation.
23 Standing up for what I believe is right has been a more
24 important introduction to American culture than the
25 food, the politics, and the Super Bowl Sundays. I would

1 never have thought that as an international student on a
2 nonimmigrant visa, the civil justice system of the
3 United States of America would give me the same rights
4 as its own citizens. After an early life of equating
5 strength with the steadfastness in following one's own
6 path in spite of the challenges thrown by life, I got to
7 learn about the importance of demanding reform in the
8 face of abuse. After years of internalizing the message
9 that sexual violence stems from the deficiencies in a
10 victim's moral integrity, I got to learn about the
11 fundamental, nonnegotiable value of human dignity. I've
12 been given the ability to not only negotiate for
13 bringing closure to those who have been hurt in the
14 past, but to demand structural change in our own
15 institution. I decidedly feel at home even in the face
16 of adversity.

17 Our story of dissent is a single page in the
18 history book of the lived experience of oppressed
19 people. However, we are proposing to settle a sexual
20 harassment lawsuit as a class and are working with
21 Dartmouth to set a precedent for programmatic change.
22 Had someone told me about this outcome, I would have
23 disregarded it as fiction. This demonstrates the
24 importance of stating the reality of our lived
25 experience and the extent of our collective pain.

1 When we came forward, we did not know that we
2 would be here today. We sincerely hope that the
3 programmatic relief component of this settlement sets
4 the stage for civil law not to offer not just
5 distributive but transformative justice. I can't wait
6 to watch the next decade unfold as the provost diversity
7 fund is used to not only support and amplify
8 historically marginalized identities but to bring in
9 leaders and researchers with expertise in studying
10 trauma, systemic inequality, conflict and multiple
11 models of justice. Maybe someday such researchers will
12 be part of our own Psychological and Brain Sciences
13 Department.

14 I wouldn't be here if it wasn't for those who
15 stand with me. These women believed me, they supported
16 me through their own struggles, and reminded me that my
17 life has value when I couldn't believe that myself. We
18 have wept for each other and we have laughed together in
19 the most trying of times. We all study human brains and
20 behavior, but in the course of making this journey we
21 got to experience the importance of empathy, collective
22 decision-making, and solidarity. Not only do I believe
23 that every single person here today is going to lead a
24 vibrant life as scientists and advocates, but that they
25 will continue to improve the lives of those around them.

1 We have all received an education in taking action not
2 in the interest of presenting ourselves as saviors or
3 victims but for embracing the pain and amplifying the
4 voices of those who remake their lives in spite of
5 fractured histories.

6 I've wondered many times about which of my
7 memories have not been touched by trauma, and there
8 isn't much. To go through with the Title IX complaint
9 and the lawsuit, I had to leave all my wounds open
10 because healing demands safety, stability, and
11 perspective. However, transcending the limits of my
12 personal experience to prevent future harm was its own
13 form of healing. I have now given up my early dream of
14 becoming a scientist, but I am thankful that I'm amongst
15 others who share my vision and my ethos and will live my
16 dreams for me.

17 The experience is akin to simultaneously
18 living nine lives. Meanwhile, I will focus my energy on
19 creating a culture of consent and uplifting voices that
20 dare to dissent.

21 Your Honor, thank you for letting me present
22 this statement. I really hope you will remember my
23 gratitude for making space for an outsider like me, and
24 for enabling those on the margins of society to ask for
25 change that creates a more just and equitable world.

1 Thank you.

2 THE COURT: Thank you so much.

3 Attorney Marcuse, should we hand this over now
4 to Attorney Lukey, or would you like to make remarks
5 now? I want to make sure we proceed in a manner that
6 counsel has agreed on.

7 MS. MARCUSE: I will gladly pass it along to
8 Ms. Lukey after stating simply that we are very proud to
9 represent the nine plaintiffs in this case and the class
10 that is represented here today.

11 And we are very grateful that it has been
12 possible in this case to reach a resolution that permits
13 the parties in this case to enter into a historic
14 partnership going forward to make this institution,
15 Dartmouth, and academia more broadly, a better place.
16 It takes great courage I believe on behalf of all of
17 these parties to engage in such a partnership.

18 The law is at times an imperfect and limited
19 instrument, and we are so grateful that in this instance
20 we have been able to accomplish the settlement that is
21 before you today.

22 Thank you.

23 THE COURT: Thank you.

24 Attorney Lukey.

25 MS. LUKEY: Thank you, your Honor. Thank you

1 for the opportunity for all of us to be here.

2 And on a personal note, thank you to the three
3 brave women who just spoke. I was very moved by your
4 words, and I admire the courage of all of you as I know
5 does the individual I'm about to introduce who was part
6 of the important partnership that all of you have
7 brought about as part of this settlement.

8 It is my privilege to introduce the Provost of
9 Dartmouth College, Joseph Helble.

10 MR. HELBLE: Thank you.

11 Thank you, your Honor.

12 I should have recognized the same problem I
13 have in Zoom meetings and in the classroom. I forget to
14 unmute my microphone when I'm about to start speaking.

15 So first I would like to add my thanks to you,
16 your Honor, and the court for the opportunity to meet
17 with you here today and to speak with you today.

18 And Sasha, Kristina, and Vassiki, I want to
19 thank you for your statements, and I will echo what
20 Attorney Marcuse said just a moment ago. I view this as
21 an important partnership as we collectively seek to
22 address wrongs that exist in higher education that we
23 are all collectively committed to confronting.

24 So let me say on behalf of the institution
25 that I and we are grateful to the three of you and to

1 all of you for coming forward to bring to light the
2 toxic environment that was created by three former
3 faculty members who will not ever set foot on the
4 Dartmouth campus again.

5 As I've said in the past, and I'll say now, it
6 bears repeating, their conduct flies in the face of our
7 mission as an institution and our core values, and that
8 is why we took unprecedented steps to revoke their
9 tenure.

10 It's been gratifying for me to have the chance
11 to work with you, and collectively all of the plaintiffs
12 in the case, to begin to take steps to shape Dartmouth's
13 reforms and response as part of our campus climate and
14 culture initiatives.

15 As I said, we're deeply invested in
16 identifying and rectifying sexual misconduct and
17 committed to doing everything we can to prevent it in
18 the future.

19 Each of you individually in different ways in
20 your brief opening statements have referred to some of
21 the measures we're taking, measures we've developed in
22 consultation with you as plaintiffs that we're committed
23 to moving forward and acting upon.

24 It's an expansion of the provost faculty
25 diversity fund and a broadening of the scope of that

1 fund to incentivize the hiring of faculty with expertise
2 in gender and racial discrimination and violence.

3 It's the expansion, in addition, of members of
4 our external advisory committee that reviews the
5 progress of C3I, our Campus Client and Culture
6 Initiative, that was developed in response to the
7 behavior that you've collectively brought to light.

8 We have agreed jointly that we'll propose
9 nominees for these positions who have no prior
10 connection to Dartmouth, and that you will have the
11 opportunity to continue to meet as you choose with the
12 external advisory committee to help ensure that we
13 collectively are taking the steps to move Dartmouth
14 forward and hopefully more broadly move higher education
15 forward in addressing unacceptable behavior that your
16 bravery has brought to light.

17 In addition, we've committed to expanding our
18 investment and resources that support women and support
19 all members of the community who experience potential
20 harm, sexual discrimination, and sexual violence through
21 partnering with WISE, a local advocacy organization for
22 survivors of gender-based violence.

23 So let me simply end by saying I know that
24 you, the plaintiffs, and we share a willingness to do
25 the hard work necessary to create a truly nurturing,

1 supportive, and inclusive culture. I look forward to
2 continuing to work with you as I'm confident that
3 together we can make Dartmouth a leader known for zero
4 tolerance of sexual misconduct.

5 Sasha, I was struck by your words at the very
6 beginning. This is going to be a paraphrase because I
7 was jotting quickly on a pad, but I believe what you
8 said was effectively, we hope that by effecting change
9 on our own campus we will effect change elsewhere. I
10 absolutely hope and am encouraged and believe that's the
11 case and look forward to working with you collectively
12 as we bring this process to a close to make that a
13 reality.

14 So thank you, your Honor.

15 Thank you all.

16 THE COURT: All right. Thank you all very
17 much.

18 I think at this point what I would like to do
19 is just ask a few questions.

20 I have carefully read the excellent briefing
21 that has been filed, and I have just a few questions.
22 So if you will permit, I just want to make clear -- and
23 this is probably to Attorney Marcuse.

24 There are -- in your brief it says 76 women in
25 the class, but since that filing I think two recent

1 exclusions have occurred. So that's where we get a
2 total number of 74.

3 Would that be correct?

4 MS. MARCUSE: That is correct, your Honor.

5 THE COURT: Okay. All right.

6 And then I am just not clear on the average
7 class payment and how you get that number.

8 I understand the average supplemental payment
9 will likely be 280,000, but I'm confused as to how you
10 calculate the average class payment exceeding 105,000.
11 I'm sure it's just my own shortcomings. I'm sure you
12 can explain to me how you come to that number.

13 MS. MARCUSE: I would actually ask my
14 colleague, Nicole Wiitala, to address that question, if
15 I may.

16 THE COURT: You certainly may, and we'll make
17 that happen.

18 Is she on the screen right now?

19 MS. MARCUSE: She's not on the screen, but she
20 is on audio and I believe she is unmuted right now.

21 THE COURT: Excellent. Okay. Good.

22 Go ahead.

23 MS. WIITALA: Yes, your Honor. This is Nicole
24 Wiitala.

25 So for the average class payment we took the

1 \$14 million settlement and we deducted all -- we made
2 all the anticipated deductions for attorneys' fees,
3 costs, and service awards, and then we took the, at the
4 time it was 76 individuals that were in the class, and
5 basically divided that number by the amount that was
6 left over after making all deductions for costs and
7 attorneys' fees and things like that.

8 MS. MARCUSE: And I believe, and Nicole can
9 correct me if I am wrong, that one of the anticipated
10 expenses has come in below what we did anticipate, and
11 so that, along with the change in the number of class
12 members to 74 from 76, will raise that number somewhat.
13 I have not done the math, but I believe that the
14 allocation by Judge Walsh -- the expense for that was
15 capped at 85,000, I believe, and so that was the number
16 we were using. I believe that the actual number was
17 much closer to 30,000.

18 Nicole, is that correct?

19 MS. WIITALA: Yes. I believe it was about
20 \$32,000.

21 MS. MARCUSE: So along with the two fewer
22 individuals who chose to proceed as class members down
23 to 74, there will also be approximately 53,000
24 additional dollars going from the expenses category back
25 into the fund for supplemental payments.

1 THE COURT: Okay. That's clear to me. Thank
2 you.

3 And I just want to confirm my understanding
4 that only the 29 members of the class who file a claim
5 form are going to get more than the base amount.

6 Is that correct?

7 MS. WIITALA: That is correct, your Honor.

8 THE COURT: The final thing that I would flag
9 is just the clause in your proposed judgment, final
10 judgment, that has me sort of exercising forever
11 jurisdiction over the case. I think I will narrow that
12 somewhat. I think it makes sense to have me have some
13 amount of continuing jurisdiction with respect to the
14 administration of the fund, but I may narrow that
15 language somewhat. So I just wanted to alert you to
16 that.

17 I think those are my questions. I don't have
18 any questions on the attorneys' fees. I thought the
19 briefing was really, really excellent. A judge
20 appreciates that.

21 Would counsel like to say anything further
22 before we close?

23 MS. MARCUSE: Your Honor, I would just like
24 to, further to your point about the briefing,
25 acknowledge my colleague Nicole Wiitala who is largely

1 responsible for that exceptional briefing and has truly
2 been a full partner in this litigation in a very
3 extraordinary way both with respect to complicated legal
4 arguments and the very complicated human elements of
5 this case. We are very grateful to have her.

6 THE COURT: Attorney Lukey, would you like to
7 have any last words?

8 MS. LUKEY: Your Honor, no.
9 Again, to thank you.

10 Unless my partner, Justin Wolosz, who handled
11 the briefing and works for us has something to say, we
12 are content with the state of the record, and we
13 appreciate this opportunity today for all of us to get
14 together for this hearing.

15 THE COURT: Attorney Wolosz?

16 MR. WOLOSZ: No. Nothing further from me
17 unless your Honor has questions.

18 Thank you very much.

19 THE COURT: All right. Then let me say that
20 I'm likely to issue an order along the lines of the
21 proposed approval document and the proposed judgment.

22 Thank you very much to counsel in this case.
23 Your work has been first-rate. Your legal work and
24 advocacy for your clients has been really impressive.

25 To take a case like this with such highly

1 charged allegations and reduce it to a settlement is
2 commendable. For all the reasons stated in the
3 excellent briefing that you've filed in support of this
4 proposed settlement, I think that counsel have all
5 performed a public service and I thank you for that.

6 To Dartmouth: Settling this case in this
7 manner is a credit to the institution.

8 And you are, sir, as well. So thank you.

9 To the plaintiffs: You represent courage,
10 persistence, and strength. My hope is that this
11 litigation while it cannot make you whole, my hope is
12 that it brings you finality and a sense of vindication.

13 Thank you to everybody for your participation
14 in this case.

15 Let me do a last thank you and a call-out to
16 Judge Morrill, our state court judge who mediated this
17 case to this remarkable settlement. I want to
18 acknowledge him and his talents in that respect.

19 So thank you very much to everybody. I
20 appreciate everything that you've done in the case from
21 start to finish.

22 We had a little bump in the road at one point
23 where I needed further briefing, you gave me that, and
24 ultimately I was able to become very comfortable with an
25 analysis of this case that was consistent I thought with

1 Rule 23 and case law on class actions.

2 So that having been said, I think at this
3 point the court adjourns.

4 Thank you everyone.

5 MS. LUKEY: Thank you.

6 MS. MARCUSE: Thank you, your Honor.

7 (Conclusion of hearing at 10:49 a.m.)
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C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 8-28-20 /s/ Susan M. Bateman
SUSAN M. BATEMAN, RPR, CRR